

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 3081 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 - No

JIBABEN CHHANABHAI TALPADA

Versus

RAJUBHAI MOHANBHAI KACHHIA

Appearance:

MR BC DAVE for Petitioner

NOTICE SERVED for Respondent No. 1

MR DARSHAN M PARIKH for Respondent No. 3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 20/04/99

ORAL JUDGEMENT

Mr BC Dave, learned counsel for the appellant-original claimant seeks leave to reduce claim in this appeal to a sum of Rs.15,000/- for the purpose of Court fees. Leave is granted.

2. This appeal is directed against the judgment and award dated 26.2.1997 passed by the Motor Accident Claims Tribunal, Nadiad in MACP No. 653/88, insofar as the Tribunal has awarded a sum of Rs.3000/only with costs and

interest as compensation to the appellant-claimant as against her claim of Rs.50,000/-. The appeal was filed for the balance claim of Rs.47,000/-. However, before the appeal was taken up for effective hearing, the learned counsel for the appellant sought leave to reduce the claim to Rs.15,000/- and the leave as prayed for has been granted.

3. The Tribunal found that the accident took place on account of rash and negligent driving of the vehicle in question. However, the amount awarded was only Rs.3000/- on the ground that the appellant had only received a Contused Lacerated Wound as mentioned in the medical certificate and that the appellant did not produce any substantial evidence to show the expenses incurred by her.

4. Mr BC Dave, learned counsel for the appellant-claimant has submitted that the accident took place on 13.12.1987 and as per the medical evidence on record the appellant had received a Contused Lacerated Wound of 5 cms. x 2 cms. x 1 cms. and, therefore, nine stitches were required to be taken. The appellant was admitted in a Government Hospital and was hospitalized for 24 days. According to Mr Dave for the appellant, the appellant had also suffered disability on account of the aforesaid head injury.

The last assertion is disputed by Mr Darshan Parikh, learned counsel for the Insurance Company.

5. Dr Yogesh Parikh, M.S (Ortho) had issued a certificate dated 2.11.1996 mentioning, inter alia, that the patient met with vehicular accident and was admitted in Mahagujarat Hospital with head injury and unconsciousness, the patient has got complaint of constant dull aching pain in parietal region and the patient has constant backache with limitation of spinal movements with difficulty in lifting weight and daily activities, forward bending of spine is restricted by 50% with pain and spasm, rotation of spine is also terminally painful, cervical spine movement is also painful terminally and decreased chest movements on respiration.

In view of the aforesaid material on record, the Tribunal was not justified in awarding a meagre total amount of Rs.3000/-.

6. Looking to the nature of injuries sustained by the appellant, the head injury and some after effects, the Tribunal ought to have awarded a sum of at least

Rs.1000/- under the head of pain, shock and suffering. Moreover, the appellant had to remain an indoor patient in a hospital for 24 days which must have put her to incidental expenses and diet charges and her close relatives to transportation charges. Looking to the nature of injuries and the after effects as mentioned in the certificate dated 2.11.1996, the appellant also must have been required to spend about Rs.3000/- towards miscellaneous expenses as aforesaid.

7. Mr Dave for the appellant has further submitted that although the claimant had asserted that she had spent about Rs.8000/- for medical expenses, the Tribunal awarded only Rs.3000/- all-told inclusive of damages for pain, shock and suffering.

Mr Parikh has opposed the aforesaid assertion and submitted that apart from her bare statement, there is no documentary evidence to support her claim that the appellant had spent the said amount.

8. Even while accepting the contention of Mr Parikh that the appellant cannot be awarded a sum of Rs. 8000/- in view of absence of documentary evidence, looking to the nature of the injuries and subsequent after effects as mentioned in certificate dated 2.11.1996 of Dr Yogesh Parikh, it would be just and proper to award a sum of Rs.2000/- towards medical expenses.

9. The appellant is, therefore, entitled to get the following amounts :-

- (i) Rs.10,000/- for pain, shock and suffering
- (ii) Rs. 2,000/- for medical expenses.
- (iii) Rs. 3,000/- for incidental and other Misc. expenses.

Rs.15,000/-

Thus, the Tribunal ought to have awarded a sum of Rs.15,000/- to the appellant-claimant as against which the amount of only Rs.3000/- was awarded.

10. In the result, this appeal is partly allowed. The appellant-original claimant is entitled to recover an additional amount of Rs.12,000/- from the respondents who are held to be jointly and severally liable to satisfy the award. The additional amount shall carry interest at the rate of 12% per annum from the date of the claim

petition till deposit before the Tribunal. The respondents shall also pay proportionate costs to the claimant and the respondents shall bear their own costs.

Respondent No.3-Insurance Company shall deposit the aforesaid amount together with running costs and interest as aforesaid within two months from the date of receipt of a certified copy of this judgment.

Upon the amount being deposited, the Tribunal shall disburse the amount to the appellant-claimant by three A/c. Payee cheques paying the amounts in three instalments, second and third instalments payable after an interval of one month and two months respectively from the first instalment.

Sd/-

April 20, 1999 (M.S. Shah, J.)

sundar/-